

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE
LITIGATION

4:06 MD 1811 CDP
MDL Docket No. 1811

This document relates to:

VAN SILLEVOLDT RIJST, BV

PLAINTIFF

v.

CASE NO. 4:09-CV-00941 CDP

RIVIANA FOODS, INC.,
PRODUCERS RICE MILL, INC.,
RICELAND FOODS, INC.,
BAYER CORPORATION,
BAYER CROPSCIENCE LP, and
BAYER CROPSCIENCE HOLDING, INC.

DEFENDANTS

RICELAND FOODS, INC.'S OBJECTION TO PLAINTIFF'S LEXECON WAIVER

COMES NOW Defendant Riceland Foods, Inc. ("Riceland") and hereby objects to the notice of *Lexecon* waiver (DN 23) filed by Plaintiff Van Sillevoldt Rijst, B.V. ("VSR"). Riceland objects to, and does not consent to, trial of this case in this jurisdiction. Riceland requests that this case be remanded to the transferor court for trial following the completion of these coordinated pretrial proceedings, as expressly provided in 28 U.S.C. § 1407(a).

VSR references transfer to this Court pursuant to 28 U.S.C. § 1406(a). *See* DN 23, p. 1. VSR has not filed a motion to transfer pursuant to § 1406(a); nor would such a motion be well-taken. The Supreme Court's decision in *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 34 (1998) requires remand for trial, and transfer to this Court for trial (as VSR suggests) would be inappropriate absent consent of all parties. *See* MANUAL FOR COMPLEX

LITIGATION FOURTH, § 20.132, p. 223 & n. 666 (2004); *see also In re Brand-Name Prescription Drugs Antitrust Litig.*, 264 F. Supp. 2d 1372, 1377 & n. 4 (JPML 2003).

Riceland respects this Court's knowledge and expertise concerning the issues in this litigation. However, Riceland is headquartered in the Eastern District of Arkansas and prefers to have trial conducted there, where the venue is proper.

WHEREFORE, Defendant Riceland Foods, Inc. respectfully requests that, since all parties to this case have not consented to trial in this jurisdiction, this case should be remanded to the transferor court following the conclusion of these coordinated pretrial proceedings.

Respectfully submitted,

BARRETT & DEACON, P. A.
Barry Deacon
Andrew H. Dallas
300 South Church Street
P.O. Box 1700
Jonesboro, Arkansas 72403
870-931-1700
870-931-1800 (facsimile)

THOMPSON COBURN LLP

By: /s/ Christopher M. Hohn
John R. Musgrave, #3917
Christopher M. Hohn, #62067
One US Bank Plaza, Suite 2600
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000

Attorneys for Defendant Riceland Foods, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system this August 20, 2009, upon all counsel of record.

/s/ Christopher M. Hohn